*THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

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+WRIT PETITION No.32910 of 1998

%Dated 18-07-2007

The Depot Manager,
APSRTC, Karimnagar-I Depot.

Petitioner

VERSUS

$ Mohd.Ghani
& another.

Respondents

! Counsel for Petitioner : Sri T.D.Phani Kumar for
Smt.P.Rajini Reddy, SC

^Counsel for Respondent No.1: P.Koshore Rao.

<GIST:

> HEAD NOTE:

? Cases referred
1. AIR 1975 SC 2151
2. AIR 1976 SC 1080
3. AIR 1983 SC 1102
4. (1996) 6 SCC 750
5. (2000) 1 SCC 416
6. (2006) 2 SCC 584

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.32910 of 1998

Dated: .07.2007

Between:
The Depot Manager,
APSRTC, Karimnagar-I Depot.

... Petitioner

AND

Mohd.Ghani, Driver
And another

... Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.32910 of 1998

ORDER:-

This writ petition is filed for a writ of certiorari to quash the award dated 27.6.2000 of the Labour Court, Godavarikhani in I.D.No.33 of 1995 whereby it directed reinstatement of respondent No.1 as Conductor in Andhra Pradesh State Road Transport Corporation (for short 'the Corporation').

The 1st respondent was appointed as a Driver in the Corporation on 1.7.1986. While performing his duty on the route Karimnagar to Bombay on 22.4.1994, he was involved in an incident, which has lead to initiation of departmental proceedings against him. After a preliminary enquiry, a charge sheet dated 24.3.1994 was served on the 1st respondent wherein two charges were framed which read as under:

> " 1. For having attempted to commit theft of Rs.10,000/- on 22.2.1994 from a passenger, by name Sri Shaik Sharfuddin r/o.Singaram, who sat on the seat No.4, which is located by the side of your rest cot in the vehicle No.AP 9Z 6075, while you were on duty on the Karimnagar to Bombay, on 22.2.1994, which clearly shows your fraudulent motive and dishonesty, which constitutes misconduct in terms of Reg.28(xv) of APSRTC Employees' (Conduct) Reg.1963.

2. For having given room to publish above said theft mentioned in the charge No.1 in daily news paper 'Andhra Prabha' on 9.3.1994 as "prayanikudi sommu dongilinchina driveru" and degraded the image of the Corporation, which constitutes misconduct in terms of Reg.28(x) of APSRTC Employees (conduct) Reg.1963."

As the petitioner's explanation offered to the charge sheet was not satisfactory, a detailed enquiry was conducted. The enquiry officer submitted his report wherein both the charges levelled against respondent No.1 were held proved. The Depot Manager of Karimnagar-I depot, the petitioner herein, after considering the enquiry report and the material available before him imposed the penalty of removing the respondent No.1 from service vide his order dated 25.7.1994. After being unsuccessful in appeal preferred by him before the appellate authority and in the review before the Regional Manager, respondent No.1 raised industrial dispute which was registered as I.D.No.33 of 1995 before the Labour Court.

The Labour Court in its award held that the domestic enquiry was validly held. However the Labour Court on an analysis of the evidence on record held that the charge of attempt to commit theft against respondent No.1 was not proved. It was also found that the petitioner was not gainfully employed during the relevant period. Therefore, the Labour Court directed reinstatement of respondent No.1 with continuity of service and attendant benefits in respect of increments only. The Labour Court also awarded half of the back-wages in favour of respondent No.1. The present writ petition is filed questioning the said award.

Heard Sri T.D.Phani Kumar, representing Smt.P.Rajini Reddy, learned Standing Counsel for the petitioner and Sri P.Kishore Rao, learned counsel appearing for respondent No.1.

Learned counsel for the petitioner submitted that the award of the

Labour Court cannot be sustained in law in asmuch as while examining the orders of the domestic tribunals (preliminary, appellate and revisional authorities) it has acted as an appellate authority, exceeding far beyond the scope of the powers conferred on it by section 11-A of the Industrial Disputes Act 1947 (for short 'the Act'). He further submitted that the Labour Court has approached as if it was dealing with a criminal case and granted relief to respondent No.1 on the ground that the evidence available on record is not sufficient to find that the petitioner committed theft. He therefore submits that the whole approach of the Labour Court is patently erroneous.

Per contra Sri P.Kishore Rao, learned counsel for the respondent submitted that on the analysis of the material available, the Labour Court arrived at the conclusion that the misconduct of respondent No.1 was not proved and therefore, it has granted the relief in his favour. He further submitted that the Labour Court has exercised its power under section 11-A of the Act and such an exercise of power is not liable to be interfered with by this Court while exercising its power of judicial review under Article 226 of the Constitution of India.

A perusal of the award of the Labour Court shows that it has framed two points, namely: 1) whether the charges are proved, and 2) whether the penalty levied is excessive, and if so, what is the penalty leviable?

With respect to point No.1, the Labour Court gave a finding that the departmental enquiry was validly held. The Labour Court however, purporting to re-appreciate the whole evidence held that the evidence available on record is not sufficient to hold that the petitioner committed theft or stole the amount from Shaik Sharfuddin. It has also held that the attempt to commit theft is not proved. As regards charge

No.2 the Labour Court held that the evidence on record is not sufficient to prove the charge. In view of these findings on point No.1, the Labour Court directed reinstatement of respondent No.1 in accordance with the terms which were already mentioned herein above.

On a careful reading of the award and the material available on record I am of the view that the Labour Court has committed a serious error in setting aside the orders passed by the departmental authorities. It is now legally well settled that while examining the orders passed by the departmental authorities in matters concerning disciplinary proceedings, the Courts/Tribunals do not act as appellate bodies; that unlike in criminal cases proof beyond reasonable doubt is not required in departmental proceedings and that preponderance of probabilities is enough to hold an employee guilty of misconduct; that the Courts/Tribunals would not re-appreciate the evidence and interfere with the orders of the departmental authorities merely because another view is possible and that strict rules of evidence are not applicable to disciplinary proceedings and where there is some legally admissible evidence available to support the finding of guilt, the Courts/Tribunal would not set aside the penalty imposed on the ground that the evidence available on record is not sufficient to sustain the order of penalty. (See **State Of Andhra Pradesh VS. Chitra Venkata Rao**[1], **K. L. SHINDE VS. STATE OF MYSORE**[2], **JIWAN MAL KOCHAR VS. UNION OF INDIA**[3], **B.C.CHATURVEDI VS. UNION OF INDIA**[4], **HIGH COURT OF JUDICATURE AT BOMBAY THROUGH ITS REGISTRAR VS. SHASHIKANT S PATIL**[5], **SOUTH BENGAL STATE TRANSPORT CORPN VS. SWAPAN KUMAR MITRA**[6])

Keeping in view the aforementioned settled legal position, I shall examine the material available on record. A perusal of the record discloses that the enquiry officer recorded the statements of Sri Mohd.Muneeruddin, co-driver, Sri M.V.K.Rao, Superintendent (T), and Sri B.Devaiah, Conductor in the presence of petitioner and a fair opportunity was given to him to cross examine them. The enquiry officer also recorded the statement of Sri V.Venkatesham, a passenger. The Conductor on duty Sri B.Devaiah stated that on the night of 21.2.1994 when the bus of the Corporation bearing registration No.AP.9Z 6075 was proceeding from Karimnagar to Bombay, two passengers boarded the bus at Kamareddy; he showed them seat numbers 10 and 4 on which they sat; when the bus reached a place, by name, Delhi Darbar hotel at Khandala Ghat, on the following morning, the driver on duty, namely; Sri Muneeruddin was about to stop the bus, but respondent No.1 (spare driver) asked him to proceed; that after travelling for about ½ k.m., on passengers' request, the bus was brought back to Delhi Darbar hotel where except respondent No.1, all passengers including the driver on duty and the conductor got down.

He further deposed that after taking breakfast, they all boarded the bus and after travelling for about 2 kms., one of the passengers who boarded the bus at Kamareddy got up and complained that his money of Rs.10,000/- was stolen by somebody; that the Conductor asked the passengers about the money, but they denied knowledge about the same; he checked all the passengers for money and when he came into the cabin and asked respondent No.1 about money, he replied that he did not see any money; that the Conductor then checked respondent No.1's back pocket in which he found the money of Rs.10,000/- and that before the said money was taken out from the

pocket of respondent No.1, the Conductor asked him as to what was there in the pocket, the latter replied that there were some papers in the pocket and when he was asked to show those papers, he picked up a sum of Rs.10,000/-, in addition to the said amount there was another sum of Rs.1,100/- with him.

In his cross examination, to a question that respondent No.1 in his statement stated that he informed the Conductor that he found Rs.10,000/- under back-seat (seat No.50) and asked the conductor whether to give the money to the passenger or to hand it over in the police station or to remit at the depot, the Conductor replied in the negative and stated that if respondent No.1 had told him that he had the money in his possession, he would not have checked the passengers. He further stated that the passenger who sat on seat No.4 lost the money and that he gave a complaint against respondent No1.

When respondent No.1 asked whether he came to hotel alongwith the Conductor, the latter replied that though he came to the hotel he did not take breakfast. In reply to the question why the Conductor has not given a complaint to the police, he said that since the respondent No.1 has taken out money from his pocket and that since he did not experience such an incident earlier in his carrier he did not know whether a complaint should be given to police or not. It is significant to notice from the tenor of the cross-examination of the Conductor that respondent No.1 has not suggested any motive for deposing against him, though in his statement given during the enquiry, respondent No.1 stated that in view of certain union and personal differences with him the Conductor gave false complaint against him.

The driver on duty Sri Mohd.Muneeruddin deposed that

respondent No.1 who is a co-driver sat behind driving seat and that sometime after the bus left the hotel Delhi Darbar the passenger who sat on seat No.4 complained about his loosing money and as all the passengers mobbed and as he was driving the bus he did not notice the conversation that went on in the bus. He further deposed that when his co-driver (respondent No.1) took out the money, the Conductor asked him to stop the bus; that when he questioned the Conductor why the bus should be stopped, then the latter replied that the driver was giving the money which was found having fallen down in the bus. To a question posed by respondent No.1 whether the witness had seen him stealing money from the pocket of the passenger, he replied in the negative.

Sri M.V.Krishna Rao, Superintendent (T) who also deposed as a witness stated that one passenger, by name, Shaik Sharfuddin lodged a complaint against respondent No.1 alleging that he has stolen Rs.10,000/- on 22.2.1994 and on the orders of the Depot Manager, Karimnagar-I Depot, he conducted a preliminary enquiry in which he recorded the statements of B.Devaiah, Conductor and respondent No.1 and that on the basis of the evidence available on record, it was clearly established that respondent No.1 has stolen the amount of Rs.10,000/- from the pocket of Sri Shaik Sharfuddin.

Sri V.Venkatesham, s/o.Narsaiah, a passenger who travelled in the bus on the day of the incident deposed that he sat on seat No.5 and another passenger who boarded bus at Kamareddy sat by his side on seat No.4; the said passenger was talking closely with his co-passenger sitting at seat No.50, which was adjacent to seat No.4; that after the bus left Delhi Darbar hotel the passenger at seat No.4 complained that he lost Rs.10,000/-. He further deposed that the Conductor approached respondent No.1 who was sitting in

Conductor's seat and spoke to him and when he tried to convince respondent No.1 to handover the money to the passenger, the latter resisted by maintaining that the money has to be handed over either in the police station or at the depot; and that the Conductor became angry with respondent No.1 and demanded that the money should be returned to the passenger to whom it belongs and that if the matter reaches police station it would lead to unnecessary complications and that so saying the Conductor made respondent No.1 to handover the money of Rs.10,000/- to the passenger. When the Conductor insisted that a statement recorded about the incident should be signed, he and the owner of the money signed the said statement. The witness however at the end gave his opinion that in reality the 1st respondent has not committed theft and that if he had the intention of committing such theft he would have hidden the money elsewhere. In the cross examination the witness replied all the questions put by respondent No.1 in the affirmative. The whole tenor of his replies suggests beyond any doubt that he wanted to bail out respondent No.1 from the problem he was in.

In his statement respondent No.1 admitted that while he was driving bus at about 10.30 A.M., on 21.2.1994 he found a Rs.10,000/- bundle in the cabin and that he informed the same to the Conductor. He further stated that he alongwith others went to Delhi Darbar hotel and after finishing breakfast when his co-driver was driving, and after the bus traveled for about 20 kms from the said hotel one passenger complained that he lost his money and that immediately he told the Conductor that he will handover the money to the depot officials or at the police station and that the Conductor did not agree for this suggestion saying that they will be inviting risk by giving a complaint at the police station and that without informing him or the other driver, the

Conductor, in view of his having the union and personal differences with him gave complaint by obtaining the signature of the person who lost the money.

A close analysis of the aforementioned evidence available on record clearly reveals that the following facts are admitted:

1. The passenger who was traveling at seat No.4 lost his money;
2. Respondent No.1 got the money in his possession at 10.30 p.m., on 21.2.1994;
3. The passenger complained of his loosing money the following day morning, i.e., 22.4.1994 after they had breakfast and after the bus had left the dhaba where they had breakfast;
4. The money was found in possession of respondent No.1 and he resisted to immediately handover the money;
5. On the insistence of the Conductor, the money recovered from respondent No.1 was handed over to its owner Sri Sharfuddin, the passenger who was traveling on seat No.4;
6. A complaint was written on which Sharfuddin and Venkatesham who was examined as a witness signed and the said complaint was handed over alongwith covering letter dated 24.2.1994 of Conductor Sri B.Devaiah.

Though respondent No.1 in his statement admitted that he came into possession of money of Rs.10,000/- while driving on the previous night and claimed that he informed the Conductor about the same, the Conductor had not admitted the later part of the statement that he was informed about respondent No.1 finding money. If the 1st respondent has really informed the Conductor about his finding money, there was no reason why the latter would have kept quiet till the passenger who lost money made a complaint. The very fact that money was admittedly in possession of respondent No.1 and he never tried to know as to whom the money belongs shows without any pale of doubt that he had the intention of retaining the money of the passenger with

him and in this context it is immaterial whether he had stolen this money from the possession of the passenger or he had found it in his cabin when he was driving the bus. Either way, his conduct in retaining the stolen money of Rs.10,000/- with him all through the night and till it was returned around 8.00 A.M., on the next day proves beyond any doubt that the 1st respondent is guilty of grave misconduct of retaining money with him with an unlawful intention.

The conduct of the Conductor appears to be upright and impeccable. The evidence on record including the statement given by the 1st respondent shows that the moment he heard the complaint from the passenger that he lost money he made all out efforts to trace the lost money and he checked passengers before zeroing in on respondent No.1 from whom admittedly the money was recovered and handed over to the passenger. The fact that he recorded the statement of Sharfuddin, the owner of the money and Venkatesham, one of the witnesses is admitted. The contents of the said complaint clearly reveal that the 1st respondent has stolen money from the passenger. The Conductor is consistent in his stand about the involvement of respondent No.1 right from the time of his giving complaint to the Depot Manager till he deposed before the enquiry officer. Half-hearted attempt of respondent No.1 in attributing motives to the said Conductor does not inspire confidence, more so in the cross-examination of the Conductor he did not give any such suggestion to him. Therefore, the allegation made against the Conductor in the statement of respondent No.1, in my opinion is a clear after thought and without any basis. He did not come out with any details as to which union he and the Conductor belonged and what are the personal differences between them.

Money having been found in possession of respondent No.1, he

miserably failed to offer a convincing explanation that he had no intention either to steal or misappropriate the same. His whole conduct wholly falsified his ipse dixit that he had no dishonest intention of misusing the money. Even believing his version that he came into possession of money at 10.30 P.M., when he was driving the bus, having found it in the cabin, his conduct in not trying to ascertain as to whom the money belongs, is sufficient to come to a safe conclusion that respondent No.1 had the mala fide intention of retaining the money. He further confounded his conduct in retaining the money with him till the owner of money made a complaint and not disclosing that he found the money atleast when the Conductor was checking some of the passengers. I have no reason whatsoever to doubt the veracity of the evidence of Conductor who is a truthful witness and who has no axe to grind against respondent No.1.

The view taken by the Labour Court that the non-examination of Sharfuddin, the passenger who lost money is fatal, is wholly unsustainable. The approach of the Labour Court clearly suggests as if it was adjudicating a criminal case and not a dispute arising in a departmental proceedings, where, as already noted hereinabove, preponderance of probabilities is sufficient to hold an employee guilty. The manner in which it re-appreciated the evidence is alien to review of orders passed in disciplinary proceedings. Its reasoning that non-examination of the complainant in the enquiry is fatal is not sustainable because the evidence on record is sufficient to prove the misconduct of respondent No.1. Its further finding that Venkatesham supported the version of respondent No.1 is not wholly correct since, he categorically stated that money was found in possession of respondent No.1 and that on the insistence of the Conductor, he handed it over to the passenger. To this extent, his evidence corroborates with the

evidence of the Conductor. Though in his cross examination he evidently sought to oblige respondent No.1, that does not make any difference in view of his statement that money was recovered from respondent No.1. The evidence as discussed above satisfies the test of preponderance of probabilities that respondent No.1 had the dishonest intention of retaining the money belonging to a passenger. In my considered opinion the conduct of respondent No.1 certainly constitutes attempt on his part to commit theft or steal the money belonging to a passenger. The award of the Labour Court on charge No.1 cannot therefore, be sustained.

As regards charge No.2, since proof of charge No.1 is sufficient to sustain the penalty imposed on respondent No.1, there is no need to delve in to the same. With regard to the quantum of punishment, I have given my earnest consideration and I am of the view that since the respondent No.1 had committed a very serious misconduct of illegally retaining the money belonging to the passenger (whether himself stealing or he came into possession) and resisted to part with the money even when he was caught red-handed being in possession of money. If such a person is reinstated and continued in service of the respondent Corporation, which is a public utility undertaking, it will cause grave prejudice to the public interest. I am therefore of the considered view that the punishment of removal of service imposed by the departmental authority is wholly justified.

In the result, the writ petition is allowed and the award of the Labour Court is set aside.

C.V.NAGARJUNA REDDY,J

Dt : .07.2007
Mdaa.

[1] AIR 1975 SC 2151

[2] AIR 1976 SC 1080

[3] AIR 1983 SC 1102

[4] (1996) 6 SCC 750

[5] (2000) 1 SCC 416

[6] (2006) 2 SCC 584